



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via First Class Mail and Facsimile (909)328-1803

Paul A. Robinson, Jr., Esq.
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5 North Third Street, Suite 2000
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MAR 29 2016

Re: MUR 6861
Marion Latroy Williams
National Democratic Party of the U.S.A.,
Inc.
Shelby County Democratic Club d/b/a
Shelby County Democratic Party, Inc.
Memphis Democratic Club, Inc.
International Communications Association

Dear Mr. Robinson:

On August 12, 2014, the Federal Election Commission ("Commission") notified your clients, Marion Latroy Williams and organizations that are under his control, National Democratic Party of the U.S.A., Inc., Shelby County Democratic Club d/b/a Shelby County Democratic Party, Inc., Memphis Democratic Club, Inc., and International Communications Association, that it received a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on March 15, 2016, found that there is reason to believe Marion Latroy Williams, National Democratic Party of the U.S.A., Inc., Shelby County Democratic Club d/b/a Shelby County Democratic Party, Inc., Memphis Democratic Club, Inc., and International Communications Association violated 52 U.S.C. §§ 30104(c) and 30120 of the Act, and authorized an investigation of these violations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,



Matthew S. Peterson
Chair

Enclosure
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Marion Latroy Williams
National Democratic Party of the U.S.A., Inc.
Shelby County Democratic Club, Inc. d/b/a Shelby
County Democratic Party, Inc.
Memphis Democratic Club, Inc.
International Communications Association

MUR: 6861

I. INTRODUCTION

The Complaint in this matter alleges that Marion Latroy Williams and several for-profit entities under his control, National Democratic Party of the U.S.A., Inc. ("NDP"), Shelby County Democratic Club, Inc. d/b/a Shelby County Democratic Party, Inc. ("SCDC"), Memphis Democratic Club, Inc. ("MDC"), and International Communications Association ("ICA") (collectively, "Respondents")¹ violated the Act during the primary election of 2014 in two ways. First, the Complaint alleges that the Respondents engaged in fraudulent misrepresentations when they produced and distributed campaign materials featuring federal candidates, which were designed to appear as if they were produced by the official national and local Democratic Party committees when in fact they were not. Second, the Complaint alleges that the Respondents

¹ Steve Cohen for Congress and Henry M. Turley, in his official capacity as treasurer ("Cohen Committee"), is the authorized campaign committee of Congressman Steve Cohen who has represented Tennessee's 9th Congressional District for four terms before being reelected to a fifth term in November 2014.

Williams registered National Democratic Party of the USA, Inc. (2010), Shelby County Democratic Club, Inc. d/b/a Shelby County Democratic Party, Inc. (2010), and Memphis Democratic Club, Inc. (2010) as for-profit corporations with the State of Tennessee, and serves as the Registered Agent, President and CEO of each organization. Each of these corporations is currently listed as active and in good standing with the State of Tennessee. International Communications Association is not a registered organization. Williams appears to control and direct these organizations and use them interchangeably, sometimes including all of them in materials, publications and advertisements, and other times including only one or two of them. There is no information in the public record to indicate that any of these entities is an authorized state or local party committee.

1 failed to report expenditures or in-kind contributions associated with these advertisements to the
2 Commission.²

3 Williams submitted the Respondents' answer to the allegations through a series of e-
4 mails.³ Williams denies the allegations and states that these corporations have steering
5 committees that decide which candidates to endorse, and that funds for Respondents'
6 publications and materials come from fees from state and local candidates and membership
7 dues.⁴ Williams specifically asserts that no federal candidates paid to be included in the SCDC
8 sample ballots and other materials cited in the Complaint.⁵ Williams finally states that the
9 Respondent organizations have been making candidate endorsements for over 25 years and have
10 endorsed Cohen in many of its past sample ballots and other materials.⁶

11 Based upon the present record, the Commission finds no reason to believe that the
12 Respondents violated 52 U.S.C. § 30124 (formerly 2 U.S.C. § 441h). Nonetheless, the available
13 information suggests that the Respondents failed to report these campaign materials as
14 independent expenditures and that these communications lacked an adequate disclaimer.
15 Accordingly, the Commission finds reason to believe that National Democratic Party of the

² Compl. at 1; 52 U.S.C. § 30124 (formerly 2 U.S.C. § 441h). Ricky Wilkins was a Democratic candidate during the 2014 primary election; his authorized committee is Committee to Elect Ricky E Wilkins to Congress and Kimela Wright Cox, in her official capacity as treasurer ("Wilkins Committee").

³ For convenience, we treat all of the e-mails — dated October 4, 2014 at 10:32 PM, 10:34 PM, 10:38 PM, and 10:43 PM; October 5, 2014 at 7:29 AM; October 6, 2014 at 12:32 PM; October 7, 2014 at 3:16 PM and 3:17 PM; October 9, 2014 at 10:31 PM, 10:35 PM, and 11:04 PM; October 11, 2014 at 11:05 PM, 11:12 PM, and 11:22 PM; and October 13, 2014 at 5:11 PM and 5:40 PM — collectively here as a single "Response."

⁴ See Resp.

⁵ *Id.* No federal candidates have reported disbursements to any of the Respondents. A review of the public records indicates Respondents have filed no disclosures of its receipts or disbursements with the State of Tennessee, and has not registered or filed disclosures with the Commission.

⁶ The Respondents also provide materials to show that SCDC endorsed Wilkins during the August 7, 2014 primary election and that NDP endorsed Cohen during the 2014 general election. *Id.*

1 USA, Inc., Shelby County Democratic Club, Inc. d/b/a Shelby County Democratic Party, Inc.,
2 Memphis Democratic Club, Inc. and International Communications Association violated
3 52 U.S.C. §§ 30104(c) and 30120 (formerly 2 U.S.C. §§ 434(c) and 441d).

4 II. FACTUAL AND LEGAL ANALYSIS

5 A. Fraudulent Misrepresentation

6 The Act and Commission regulations prohibit any person from fraudulently
7 misrepresenting themselves as speaking for or on behalf of any candidate or political party or
8 employee or agent thereof for the purpose of soliciting contributions or donations.⁷ The Act also
9 prohibits candidates and their employees or agents from fraudulently misrepresenting
10 themselves, or any other organization under the candidate's control, as speaking or otherwise
11 acting on behalf of any other candidate or political party on a matter which is damaging to such
12 other candidate or party.⁸

13 Complainants allege that Respondents violated 52 U.S.C. § 30124(a) (formerly 2 U.S.C.
14 § 441h(a)) by fraudulently misrepresenting themselves in a manner that was intentionally
15 designed to convince the public that Respondents were speaking on behalf of official Democratic
16 national and local party committees.⁹ According to the Complaint, Respondents attempted to

⁷ 52 U.S.C. § 30124(b)(1) (formerly 2 U.S.C. § 441h(b)(1)); 11 C.F.R. § 110.16(b)(1). The term "candidate" means "an individual who seeks nomination for election, or election, to *Federal* office." 52 U.S.C. § 30101(2) (formerly 2 U.S.C. § 431(2)).

⁸ 52 U.S.C. § 30124(a)(1) (formerly 2 U.S.C. § 441h(a)(1)); 11 C.F.R. § 110.16(a)(1). *See* Explanation and Justification for 11 C.F.R. § 110.16, Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,968 (Dec. 13, 2002) (noting that section 30124(b) (formerly section 441h(b)) "prohibits a person from fraudulently misrepresenting that the person is speaking, writing or otherwise acting for, or on behalf of, a Federal candidate or political party, or an employee or agent of either, for the purpose of soliciting contributions or donations."

⁹ Compl. at 2.

1 deceive or confuse the public by insinuating that Respondents' endorsements actually reflected
2 the views of national and local Democratic Party.

3 To violate Section 30124, the alleged fraudulent misrepresentation must be made by a
4 "candidate for Federal office" and must be done "on a matter which is damaging to such other
5 candidate or political party," or must be done by a person misrepresenting that they are speaking,
6 writing or otherwise acting on behalf of a political candidate or political party "for the purpose of
7 soliciting contributions or donations."¹⁰

8 Here, the alleged communications, while potentially misleading to the public, do not
9 constitute a misrepresentation of campaign authority as set forth in the Act. First, the conduct
10 was undertaken by corporations, not a federal candidate, so the conduct does not satisfy the first
11 part of the provision.¹¹ Second, even if Respondents purported to act on behalf of a federal
12 candidate or political party through their communications, they did not do so for the purpose of
13 soliciting contributions or donations.¹² Thus, the communications do not satisfy the
14 requirements of the second part of the provision.¹³

15 Given that the contested communications do not appear to satisfy the elements of
16 fraudulent misrepresentation of campaign authority as described in the Act, the Commission
17 finds no reason to believe that National Democratic Party of the USA, Inc., Shelby County
18 Democratic Club, Inc. d/b/a Shelby County Democratic Party, Inc., Memphis Democratic Club,

¹⁰ 52 U.S.C. § 30124(a)-(b) (formerly 2 U.S.C. § 441h(a)-(b)); *see* MUR 6837 (Lalley).

¹¹ 52 U.S.C. § 30124(a).

¹² 52 U.S.C. § 30124(b).

¹³ No information before the Commission suggests that the Respondents acted on behalf of or as agents or employees of Wilkins, nor is agency or coordination between the Respondents and the Wilkins campaign alleged in the Complaint.

1 Inc., and International Communications Association violated 52 U.S.C. § 30124 (formerly
2 2 U.S.C. § 441h).

3 **B. Failure to Report Independent Expenditures**

4 The Act defines “expenditure” as “any purchase, payment, distribution, loan, advance,
5 deposit, or gift of money or anything of value made by any person for the purpose of influencing
6 any election for Federal office.”¹⁴ “Independent expenditures” are expenditures by a person
7 expressly advocating the election or defeat of a clearly identified federal candidate that is not
8 made in concert or cooperation with or at the request or suggestion of such candidate, the
9 candidate’s authorized political committee, or their agents, or a political party committee or its
10 agents.¹⁵ Every person, other than a political committee, who makes independent expenditures
11 over \$250 in a calendar year must disclose those expenditures in reports to the Commission.¹⁶

12 The available information indicates that the Respondents made independent expenditures
13 during the 2014 primary and general elections when they produced and distributed materials
14 including sample ballots, yard signs, flyers, mailers, and radio and television advertisements that
15 endorsed federal candidates, including Wilkins and Cohen. Respondents failed to report these
16 independent expenditures to the Commission, however, and the record indicates that the amount
17 spent on each of these communications likely exceeded the \$250 reporting threshold. In fact,
18 there is direct evidence that the Respondents exceeded the threshold with respect to their
19 television advertisement,¹⁷ and with respect to their other communications, Respondents

¹⁴ 52 U.S.C. §§ 30101(9)(A)(i) (formerly 2 U.S.C. § 431(9)(A)(i)); 11 C.F.R. § 100.111.

¹⁵ 52 U.S.C. § 30101(17) (formerly 2 U.S.C. § 431(17)).

¹⁶ *Id.* § 30104(c)(1), (b)(3)(A) (formerly 2 U.S.C. §§ 434(c)(1), (b)(3)(A)).

¹⁷ The FCC’s public file for Memphis Fox Affiliate WHBQ indicates that SCDC spent at least \$400 for a one-minute advertisement that aired August 1, 2014 during the 11:00-11:30AM news program, which listed “Randy

1 represented to candidates receiving endorsements that the flyers and sample ballots would be
2 sent to all registered voters in Memphis and Shelby Counties, an undertaking that likely
3 exceeded \$250.¹⁸

4 For these reasons, the Commission finds reason to believe that National Democratic Party
5 of the USA, Inc., Shelby County Democratic Club, Inc. d/b/a Shelby County Democratic Party,
6 Inc., Memphis Democratic Club, Inc., and International Communications Association violated
7 the Act's reporting requirements set forth in 52 U.S.C. § 30104(c) (formerly 2 U.S.C. § 434(c)),
8 and authorized an investigation to determine the amount the Respondents spent on the
9 independent expenditures at issue.

10 **C. Inadequate Disclaimer**

11 The Act requires disclaimers identifying the person that paid for any public
12 communication made by any person that contains express advocacy, solicits a contribution, or
13 qualifies as an "electioneering communication" under 11 C.F.R. § 100.29.¹⁹ The disclaimer must
14 be "presented in a clear and conspicuous manner, to give the reader, observer, or listener
15 adequate notice of the identity of the person or political committee that paid for, and where
16 required, that authorized the communication."²⁰ If a communication is paid for by a person or
17 entity other than a candidate's authorized committee, the communication must clearly state that it
18 has been paid for by such other persons and authorized by the candidate's authorized

Wilkins" as its "Ad-ID." See FCC Political Public File and Agreement between Fox 15 WHBQ and Shelby County Democratic Club, Inc. (July 29, 2014); see also Invoice from Fox 15 WHBQ to Shelby County Democratic Club, Inc. (Aug. 10, 2014).

¹⁸ See Compl. at Attach. 1; see also Resp.

¹⁹ 52 U.S.C. § 30104(b)(6)(B)(iii) (formerly 2 U.S.C. § 434(b)(6)(B)(iii)); 11 C.F.R. §§ 104.3(b)(3)(vii), 104.4(a).

²⁰ 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d); 11 C.F.R. § 110.11(a)-(c).

1 political committee.²¹ If a communication is not authorized by candidate's authorized,
2 committee, it must clearly state the name and permanent address, telephone number or World
3 Wide Web address of the person who paid for the communication and state that the
4 communication is not authorized by any candidate or candidate's committee.²² For printed
5 communications, disclaimers must be clear and conspicuous, be of sufficient type size to be
6 clearly readable, be contained in a printed box set apart from the other contents of the
7 communication, and must clearly state who paid for the communication.²³

8 Based on information provided in the Complaint and Response, it appears that the
9 Respondents posted billboards, yard signs, flyers, advertisements, and radio and television
10 advertisements to the general public in and around Shelby County that endorsed federal
11 candidates during the 2014 primary and general elections. These communications and
12 advertisements expressly advocated the election of clearly identified federal candidates and
13 therefore qualified as public communications that required proper disclaimers.²⁴ The relevant
14 communications lacked appropriate disclaimers, however, as they failed to clearly state the
15 name, permanent address, telephone number, or World Wide Web address of the person or entity
16 who paid for the communication, or state whether the communications were authorized by any
17 candidate or candidate's committee; nor did the printed materials comply with the specifically
18 enumerated size, type, and font requirements set forth in the regulations.²⁵

²¹ *Id.*

²² *Id.*

²³ See 11 C.F.R. § 110.11(c)(2), (d)(1)(ii).

²⁴ 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d); 11 C.F.R. § 100.26.

²⁵ See Resp.

1 Accordingly, the Commission finds reason to believe that Marion Latroy Williams and
2 National Democratic Party of the USA, Inc., Shelby County Democratic Club, Inc. d/b/a Shelby
3 County Democratic Party, Inc., Memphis Democratic Club, Inc., and International
4 Communications Association violated 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d) by failing
5 to include proper disclaimers in their public endorsement communications and advertisements.